

30 August 1974

MEMORANDUM FOR: Mr. George Cary

George:

Talked to Ron Gainer, head of the Criminal Code Revision Task Force at Justice, on our proposed amendments to the National Security Act. Tom Hayes on their legislative side, and Ezra Friedman, who is doing most of the work in this area for Criminal Division, are on vacation but will be getting together next week to prepare a report to Nedzi. They will consult with me.

Justice is still not happy with the idea of court review of classification but apparently, they are having it forced upon them. He is sending me some draft language which would incorporate review in the code revision. Some time in the next two weeks, possibly as early as next Wednesday, the Attorney General, his deputy, and McClellan and Hruska, are to get together to discuss the subject of code revision of the propriety of classification in connection with the code revision. From this Gainer expects to get a pretty good indication of the feelings of the conservative senators of both parties on the committee. I expressed Colby's concern that we act in time to have a chance to tie an amendment to Nedzi's bill.

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review

Gainer also made the point that they feel that some day it may be necessary to get a Title 3 warrant (1968 Omnibus Crime Act) for non-fourth amendment electronic surveillance. In this regard, he said that they think a special court may be set up with limited jurisdiction to consider national security wiretap warrant requests and that such a court might be a natural vehicle for the kind of review we were thinking of.

They also have modified Section 1124 language (Criminal Code Revision) which would limit the coverage of this section to situations where the information is: (1) not communicated to a foreign agent; (2) not communicated for money; and, (3) where the defendant has exhausted his administrative remedies in seeking declassification.

Gainer also said they have drafted a bar to prosecution provision for use in cases involving classified information which would require agreement of the concerned agency, ICRC, and the Attorney General before prosecution could proceed. I am not sure that this one makes very much sense to me.

On the matter of the injunction provision, it would seem that there is some room for agreement by Justice. Their principal concern is that an attempt to get such a provision which failed might make it more difficult to get a court to issue an injunction.

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Acting General Counsel